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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,657	02/19/2002	Yoshiaki Yokoo	159-71	2579
23117	7590	03/01/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 03/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/076,657

Applicant(s)

YOKOO ET AL.

Examiner

Drew E. Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4-11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11, 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Status Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:

Disposition 1) ☐ Certified copies of the priority documents have been received.

- 4) ☒ 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage

5) ☐ Claim application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Attachment(s) Papers

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1761

## DETAILED ACTION

### Response to Amendment

1. The declaration under 37 CFR 1.132 filed January 5, 2006 is insufficient to overcome the rejection of claims 1, 4-11, and 14 based upon Chen et al as set forth in the last Office action because: the experiments conducted by Mr. Yokoo did not include the product of Chen et al. Specifically, there was not an example of mango juice produced via ultrafiltration as done by Chen et al. Furthermore, Chen et al states that the juice provided natural color and flavor (column 9, lines 29-41) and that the pore size of the filter be sufficiently large for soluble color components to go through (column 8, line 1).

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

overcome the rejection of claims 1, 4-11, and 14 based upon Chen et al as set forth in the last Office action because: the experiments conducted by Mr. Yokoo did not include the product of Chen et al. Specifically, there was not an example of mango juice produced via ultrafiltration as done by Chen et al. Furthermore, Chen et al states that the juice provided natural color and flavor (column 9, lines 29-41) and that the pore size of the filter be sufficiently large for soluble color components to go through (column 8, line 1).

### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

of the filter be sufficiently large for soluble color components to go through (column 8, line 1).

3. Claims 1 and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al [Pat. No. 5,756,141].

Chen et al [Pat. No. 5,756,141].

Chen et al teaches a processed mango juice having substantially no pulp (column 7, lines 33-60; claim 3), mango puree (column 5, line 45; column 10, line 16), a beverage made

Art Unit: 1761

from mango juice and water (column 5, line 26), inherently preventing sedimentation due to the lack of pulp, providing lowered viscosity and excellent flavor (column 4, lines 58-65), the use of 5-35% aloe vera (column 13, line 20), an alcoholic drink (column 11, line 67), the juice having a natural color and flavor (column 9, lines 29-41), and the juice inherently having a turbidity above 2000 NTU. Phrases such as "by centrifugal separation" are merely preferred methods of making the claimed product.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

Art Unit: 1761

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (line 67), the juice having a natural color and flavor (column 9, lines 29-41), and the juice inherently having a turbidity above 2000 NTU. Phrases such as "by centrifugal separation" are merely preferred methods of making the claimed product.

Chen et al teach the above mentioned components. Chen et al do not specifically recite

fruit wine. XP-002201947 teaches a fruit wine made from mango juice (abstract). It

would have been obvious to one of ordinary skill in the art to incorporate the fruit wine of

### **Claim Rejections - 35 USC § 103**

XP-002201947 into the invention of Chen et al since both are directed to mango juice

beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and

since mango wine was commonly known, as shown by XP-002201947.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al

al as applied above, in view of DE 20102826U1.

Chen et al teach the above mentioned components. Chen et al do not specifically recite

al as applied above, in view of DE 20102826U1.

Chen et al teach the above mentioned components. Chen et al do not specifically recite

Art Unit: 1761

Chen et al teach the above mentioned components. Chen et al do not specifically recite liqueur. DE 20102826U1 teaches a liqueur made from mango juice (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the liqueur of DE 20102826U1 into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and since mango liqueur was commonly known, as shown by DE 20102826U1.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of Wu et al [Pat. No. 5,468,508].

Chen et al teach the above mentioned components. Chen et al do not specifically recite a transparent container. Wu et al teach mango juice in a glass bottle (column 9, line 28; column 4, line 64). It would have been obvious to one of ordinary skill in the art to incorporate the glass bottle of Wu et al into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included packaging (column 13, line 58), and since mango juice was commonly bottled in glass packages, as shown by Wu et al. since mango liqueur was commonly known, as shown by DE 20102826U1.

7. Claim 14 is rejected under **Response to Arguments**

8. Applicant's arguments filed January 5, 2006 have been fully considered but they are not persuasive.

Applicant argues that Chen et al did not teach a turbidity of at least 2000 NTU.

However, Chen et al teach that the juice provided natural color and flavor (column 9, lines 29-41) and that the pore size of the filter be sufficiently large for soluble color directed to mango juice beverages, since Chen et al already included packaging (column 13, line 58) and since mango juice was commonly bottled in glass packages, as shown by Wu et al.

Art Unit: 1761

components to go through (column 8, line 1). Although, the term "turbidity" is not used, the product of Chen et al inherently possessed a turbidity of at least 2000 NTU absent any clear evidence to the contrary.

### **Conclusion**

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/076,657

Page 6

Art Unit: 1761

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*Drew Becked*  
DREW BECKED  
PRIMARY EXAMINER  
2/27/06